



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Three hundred thirty-eighth meeting
Tuesday
December 17, 2013**

**Room 414
State Capitol
Pierre, South Dakota**

The three hundred thirty-eighth meeting of the Rules Review Committee was called to order by Chair Representative Timothy Johns at 9:01 a.m. CT, on December 17, 2013, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following locations: Department of Human Services, 2361 Dakota Ave. S., Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 155, Mitchell, South Dakota; South Dakota School of Mines and Technology, 501 E. St. Joseph St., Room CB 109, Rapid City, South Dakota; University Center, 4801 N. Career Ave., Room FADM 145, Sioux Falls, South Dakota; and the Department of Transportation, 1306 W. 31st St., Yankton, South Dakota.

A quorum was determined with the following members answering the roll call: Senator Mike Vehle (Vice Chair); and Representatives Peggy Gibson, Anne Hajek (via telephone), and Timothy Johns (Chair). Senators Angie Buhl O'Donnell and Jean Hunhoff were excused. Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.sd.gov> under "Interim."

Approval of Minutes

Representative Gibson moved, seconded by Senator Vehle, that the minutes of the November 12, 2013, meeting be approved. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Rules Reviewed

Department of Education: Board of Education – Adopt a Funding rule to allow school districts to use special education funds to pay for administrative expenses incurred by educational service cooperatives as a result of providing special education service.

Ms. Tami Darnall reviewed the proposed rule.

Representative Gibson moved, seconded by Representative Hajek, that the review of the rule proposed by the Department of Education: Board of Education is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Agriculture: State Brand Board – Amend rules to authorize the issuance of annual permits for the transportation of rodeo stock.

Ms. Debbie Trapp and Mr. Wray Shouldis reviewed the proposed rules.

Representative Hajek moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Agriculture: State Brand Board is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Game, Fish and Parks – Amend a Uses of Parks and Public Lands rule to create an exception to the prohibition against uncased firearms and bows in Oahe Downstream Recreation Area for persons who possess a valid turkey license for Unit PST-58B and change a reference from "Blood Run Nature Area" to "Good Earth State Park"; amend Spring Wild Turkey Hunting Season rules to change the number and type of licenses available, set the season dates, and change a reference from "Blood Run Nature Area" to "Good Earth State Park"; amend a Private Shooting Preserves rule to remove the restriction on releasing only chukar partridge and allow any species of partridge to be released; and amend Captive Game Birds rules to remove the restrictions on propagating, possessing, selling, offering for sale, or releasing from captivity only "Chukar" or "Hungarian" partridge and make the rule applicable to any species of partridge.

Mr. Tony Leif reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Transportation – Amend a General Provisions rule to add definitions for construction contract and prospective bidder and delete the definition for department contract; amend Classification and Bidding Capacity Rating rules to allow the Secretary of Transportation to appoint a temporary alternate to the classification and rating committee if a member is unavailable, eliminate the requirement for the department to maintain a list of all bidding proposals for every letting, increase the threshold for requiring prequalification of bidders from \$100,000 to \$200,000, change the terms "contractor" and "applicant" to "prospective bidder", require a citation for specific statutory exemption from disclosure of confidential financial records, work classifications are being amended to update work types and add a classification for bridge painting, establish the maximum per contract bidding capacity when an audited financial statement is submitted, amend the effective period for a bidding capacity rating to coincide with the expiration date of the surety bond or expiration of

the certificate of surety and increase the permissible extension period from 30 to 60 days, clarify that a reduction in bidding capacity for uncompleted work on other contracts is for bonded work, clarify allowable deduction factors and how deductions may be applied, increase the maximum possible period of ineligibility and conform to federal requirements, define the potential maximum period of ineligibility, update the term "prospective bidder" and make additional clarifications, provide for appeal by a timely request to the Secretary to review a determination of the classification committee, and a decision within 5 days thereafter, rather than a formal Chapter 1-26 hearing process, clarify when the new prequalification statement must be received, clarify the time period for submission of a new prequalification statement, establish the process for a prospective bidder to retain or revise their prequalification status, clarify what prior work experience will be considered by the committee when establishing a bidding capacity rating, amend Bid Proposals rules to eliminate superfluous provisions and include Region lettings, update the term "prospective bidder", repeal a redundant rule regarding preference among multiple bid proposals, repeal a rule that is no longer necessary due to the new electronic bidding system; amend Suspension and Debarment rules to update language as reflected in the new definitions, clarify the suspension is from bidding construction contracts, eliminate reference to a hearing officer, clarify the effective date of debarment, clarify that only one of the three circumstances need to apply in a particular situation, correct references to other rules and remove the restriction on subcontracting, establish the factors for which the department can suspend or deny a contractor's prequalification status, establish the period of suspension of a contractor's prequalification status, establish the procedure by which a suspended contractor may restore their prequalified status following the suspension period, and repeal Highway Construction Contract Requirements rules because the requirements are in the Standard Specifications for Roads and Bridges.

Mr. Bill Nevin and Ms. Laurie Schultz reviewed the proposed rules.

Representative Johns commented that ARSD 70:07:02:13 and 70:07:02:14 were inconsistent as far as the timeframe that a bidder would be ineligible. One stated 36 months and the other 12 months. It was also noted there was a typo in ARSD 70:07:01:01(5) – "and and addendum". Mr. Nevin stated that the second "and" should be corrected to "any".

Representative Gibson moved, seconded by Representative Hajek, that the review of the rules proposed by the Department of Transportation is complete with the exception of ARSD 70:07:02:13 and 70:07:02:14 which be reverted back to a prior step for further clarification. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Labor and Regulation: Appraiser Certification Program – Amend rules to require notice of change of email address; include in the appraiser application a requirement to disclose email address, if available; completion of the supervisory and state-registered appraiser education program before supervision begins; state that nonclient appraisal experience is allowed for experience credit; change supervising to supervisory appraiser; adoption of the new edition of the uniform standards; change a cited statute; provide update

conditions for continuing education; and allow partial hours for continuing education under certain circumstances.

Ms. Sherry Bren reviewed the proposed rules.

Senator Vehle moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Labor and Regulation: Appraiser Certification Program is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Revenue: Commission on Gaming – Amend Racing rules to establish a deadline for filing a request for a hearing and for the stewards to issue a final ruling as well as the procedures for requesting the hearing; repeal a rule regarding the approval required for communication devices; repeal a rule to relieve track management of the cost of installing a telephone landline in the commission office for a few weeks a year; require tracks to provide safety vests to track employees while on duty; update current industry practices and terminology; require the person who enters a horse in a race or who accepts such an entry by telephone to sign the entry form and to reflect current industry practices and terminology; eliminate unnecessary record keeping regarding Furosemide; eliminate a bleeder list; remove a requirement to conduct an endoscopic examination at the race track within one hour of a race or exercise period; remove the requirement to maintain unnecessary records; give more time for changes of medication treatment to be reported to the betting public and the elimination of the "oath" requirement; repeal a rule that conflicts with ARSD 20:04:27:13.07; eliminate reference to "the official bleeder list" which is no longer maintained; allow veterinarians to administer Furosemide to prevent bleeding in race horses in a more efficient manner and eliminates the requirement for keeping unnecessary records; inform persons of the procedures to request a hearing on disqualification; amend Gaming Rules to clarify minimum bankroll requirements; change the length of record retention from five years to three years; allow the linking of progressive slot machines in Deadwood, SD, to progressive slot machines located in other jurisdictions where such games are allowed; and provide procedures to allow third-party connections to licensees on-line monitoring and control systems.

Mr. Larry Eliason, Executive Director, and **Mr. Mike Shaw**, Attorney for the Commission, reviewed the proposed racing rules.

Representative Gibson moved, seconded by Senator Vehle, that the review of the racing rules proposed by the Department of Revenue: Commission on Gaming is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Mr. Craig Sparrow reviewed the proposed gaming rules. It was noted that proposed rule change to the minimum bankroll requirements had been removed from the original rule package.

Public Testimony

Mr. Roger Tellinghuisen, Attorney representing IGT, testified in support of the proposed change to ARSD 20:18:17:24.14 to allow the interlink of progressive slot machines within or outside of South Dakota.

Ms. Gayle Bauer, representing IGT, answered questions regarding ARSD 20:18:17:24.14.

Representative Gibson moved, seconded by Senator Vehle, that the review of the gaming rules proposed by the Department of Revenue: Commission on Gaming is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Revenue: Division of Property and Special Taxes – Amend rules to update manuals to current version and ensure that the language of the rules is consistent.

Mr. Michael Houdyshell reviewed the proposed rules.

Senator Vehle moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Revenue: Division of Property and Special Taxes is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Social Services: Division of Adult Services and Aging – Amend rules to repeal obsolete provisions, update definitions, update internal references, update criteria for adult protective services eligibility, outlines definitions, eligibility, and assessment requirements for home and community-based services, describe requirements for the individual care plan, outlines definitions and eligibility for the caregiver support program, describes support services covered under the caregiver support program.

Ms. Laura Ringling reviewed the proposed rules.

Representative Hajek moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Social Services: Division of Adult Services and Aging is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Social Services: Division of Medical Services – Amend rules to make language cleanup changes, update references, remove outdated references, update certain information to the department's website, update list of noncovered services and prior authorizations, update cost sharing requirements for certain services, clarify billing and service requirements, clarify readmission time periods for same or related diagnoses, repeal obsolete provisions, and include psychiatric evaluations in the list of approved documentation for admission to certain facilities.

Ms. Ringling and Ms. Kirby Stone reviewed the proposed rules.

Senator Vehle moved, seconded by Representative Hajek, that the review of the rules proposed by the Department of Social Services: Division of Medical Services is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Labor and Regulation: Board of Technical Professions – Amend rules to add deadlines for national examinations that will be moved to computer based testing (CBT); affirm deadlines to the Board's own examinations; remove fees collected by the Board for examinations that it no longer proctors; establish a fee in the event of an applicant having to retake the petroleum release assessor or remediator examination; and clarify Comity licensure and examination requirements.

Mr. Mark Humphreys, Executive Director for the Board, reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Labor and Regulation: Board of Technical Professions is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Secretary of State – Amend rules to establish a fee for absentee voter registration information obtained from the statewide voter registration file per election.

Mr. Jason Gant, Secretary of State, reviewed the proposed rules.

Representative Johns moved, seconded by Senator Vehle, that the review of the rules proposed by the Office of the Secretary of State is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Health: Board of Medical and Osteopathic Examiners – Adopt rules to create the standards in which an applicant can be issued a license through reciprocity and to allow provisional licenses to those requesting the examination waiver based on ABMS Board Certification.

Ms. Margaret Hansen, Executive Director of the Board, reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Hajek, that the review of the rules proposed by the Department of Health: Board of Medical and Osteopathic Examiners is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Department of Human Services: South Dakota Developmental Center; Department of Health; and Department of Social Services – Amend rules to remove all references to "mental retardation" or "mentally retarded" from Department of Human Services, Department

of Social Services, and Department of Health's administrative rules and replace them with "intellectual disability."

Ms. Gloria Pearson, Secretary of the Department of Human Services, and **Mr. Grant Flynn** reviewed the proposed rules for the three departments.

Representative Hajek moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Human Services: South Dakota Developmental Center; Department of Health; and Department of Social Services is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Governor's Office of Economic Development – Amend rules to bring the certification criteria into line with industry standards relating to utility, transportation, and environmental program requirements.

Mr. Nathan Lukkes reviewed the proposed rules. He noted two apparent errors in the rules. In ARSD 68:03:01:11(7) repeated subdivision (4) and should be deleted. Also ARSD 68:03:01:13(4) should have been changed as follows: "~~sufficient to satisfy a minimum demand of 13kV~~ at a voltage level that exceeds 12 kV" to coincide with the same change made to ARSD 68:03:01:11.

Representative Hajek moved, seconded by Representative Gibson, that the apparent errors be corrected as stated and that the review of the rules proposed by the Governor's Office of Economic Development is complete. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Adjournment

Representative Gibson moved, seconded by Representative Hajek, that the meeting be adjourned. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hajek, Johns, and Vehle. Members excused: Buhl O'Donnell and Hunhoff.

Chair Johns adjourned the meeting at 12:10 p.m.



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